

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 FRANK M. PECK,

4 Plaintiff

5 v.

6 STATE OF NEVADA, et al.,

7 Defendants

Case No.: 2:18-cv-00237-APG-VCF

**Order Denying Motions for Restraining
Order, Preliminary Injunction, and for
Decision**

[ECF Nos. 68, 69, 81]

8 Plaintiff Frank Peck moves for a restraining order and preliminary injunction requiring
9 defendant Dwaine Wilson to provide the approved low-fat, low-cholesterol diet without making
10 “cheap” substitutes for some of the food items. Peck also request that I grant the motion as
11 unopposed.

12 To qualify for a preliminary injunction, a plaintiff must demonstrate: (1) a likelihood of
13 success on the merits, (2) a likelihood of irreparable harm, (3) the balance of hardships favors the
14 plaintiff, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*,
15 555 U.S. 7, 20 (2008). Alternatively, under the sliding scale approach, the plaintiff must
16 demonstrate (1) serious questions on the merits, (2) a likelihood of irreparable harm, (3) the
17 balance of hardships tips sharply in the plaintiff’s favor, and (4) an injunction is in the public
18 interest. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

19 In the context of a civil action challenging prison conditions, injunctive relief “must be
20 narrowly drawn, extend no further than necessary to correct the harm the court finds requires
21 preliminary relief, and be the least intrusive means necessary to correct that harm.” 18 U.S.C.
22 § 3626(a)(2). I must give “substantial weight to any adverse impact on public safety or the
23 operation of a criminal justice system caused by the preliminary relief and . . . respect the

1 principles of comity set out” in § 3626(a)(1)(B). *Id.* A preliminary injunction is “an
2 extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear
3 showing, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)
4 (quotation and emphasis omitted).

5 I deny Peck’s motions. I granted the defendants an extension of time to respond to
6 Peck’s motions for injunctive relief, so I deny his request that I grant his motions for injunctive
7 relief as unopposed. *See* ECF No. 79. Peck has not shown a likelihood of success on the merits
8 or that he is likely to suffer irreparable harm in the absence of injunctive relief. The diet has
9 been approved by a licensed dietician and there is no evidence that the diet poses a health risk.
10 ECF No. 84-4. Peck’s unsubstantiated lay opinion that the food he is being served is
11 “nutritionally inadequate and harmful” to health does not suffice to support injunctive relief.

12 IT IS THEREFORE ORDERED that plaintiff Frank Peck’s motions for restraining order
13 and preliminary injunction (**ECF Nos. 68, 69**) are **DENIED**.

14 IT IS FURTHER ORDERED that plaintiff Frank Peck’s motion for decision (**ECF No.**
15 **81**) is **DENIED**.

16 DATED this 25th day of June, 2019.

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19 ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE
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